
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

WILLIAM EARL DURHAM,

Plaintiff,

versus

PAM NICKLES, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:13-CV-369

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff William Earl Durham, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The magistrate judge recommends this lawsuit be dismissed for failure to state a claim upon which relief may be granted.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the Report and Recommendation. The court must therefore conduct a *de novo* review of the objections.

Plaintiff was previously convicted for failing to comply with sex offender registration requirements. He alleges the defendants took certain improper actions which resulted in his conviction. The magistrate judge concluded plaintiff's claim was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), because a finding in plaintiff's favor would call into question the validity of his conviction.

In his objections, plaintiff states he is not seeking to call into question the validity of his conviction. He states he has filed a separate petition for writ of habeas corpus concerning his

conviction. Plaintiff states he is claiming that the defendants either refused to investigate his claim that he was not required to register as a sex offender or knew he was not required to register, but failed to take action to prevent him from being arrested and convicted. He states his lawsuit is not a challenge to his conviction, but to the fact that the defendants unlawfully required him to register as a sex offender.

The court takes note of plaintiff's assertion that he is not seeking to challenge the validity of his conviction. However, this assertion does not prevent his lawsuit from being dismissed. In order to find in plaintiff's favor, this court would have to conclude that the defendants acted improperly when they determined plaintiff was required to register as a sex offender. As petitioner was convicted for failing to comply with sex offender registration requirements, such a conclusion would "necessarily imply the invalidity of his conviction." *Heck v. Humphrey*, 512 U.S. at 487. Accordingly, the Supreme Court's decision in *Heck* requires that his complaint be dismissed because he does not allege his conviction has been invalidated. *Id.*

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 17th day of July, 2015.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE